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**IN THE
COURT OF APPEALS OF INDIANA**

ALONZO W. SANSBURY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 82A04-0610-CR-602

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0501-FB-12

October 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Today we review the actions of a judge¹ who thought he was wrong—he was right. Appellant-defendant Alonzo W. Sansbury belatedly appeals his conviction for Robbery,² a class C felony. Specifically, Sansbury argues that (1) the State failed to present a sufficient chain of custody for DNA evidence found on a hat Sansbury wore during the crime, (2) the trial court violated Sansbury’s right to confrontation, (3) the trial court violated the rule announced in Blakely v. Washington³ when it identified the victim’s trauma as an aggravating circumstance, and (4) his sentence is inappropriate in light of the nature of his offense and his character. The State cross-appeals the trial court’s decision to grant Sansbury’s petition to file a belated notice of appeal. Because the evidence in the record does not show that Sansbury was not at fault for failing to file a timely appeal, we conclude that the trial court erred by granting his petition to file a belated notice of appeal. Thus, we reverse the judgment of the trial court and dismiss this appeal.

FACTS

Adrienne Camp went to a grocery store in Evansville on the evening of January 3, 2005. Sansbury was standing outside the store. As Camp walked past Sansbury, he grabbed her purse. Camp fought back, struggling to reclaim her purse and yelling for help. Sansbury

¹ The cover page of our memorandum decision lists the Honorable Carl A. Heldt—the trial judge who presided over Alonzo Sansbury’s trial and sentencing—as the presiding judge. However, as detailed further in our discussion, Judge Heldt was not the judge who granted Sansbury’s motion to file a belated appeal. While it is clear from the record that another judge granted Sansbury’s motion and presided over the motion to correct error hearing, we are unable to determine the identity of that judge. The court reporter erroneously lists Judge Heldt on the cover page of the motion to correct error hearing transcript, the record does not contain motions signed by this trial judge, and the CCS report generically lists his actions as “the trial court.” Thus, we are unable to determine the identity of this individual.

² Ind. Code § 35-42-5-1.

ultimately wrenched the purse from Camp's grasp, ripping off two of Camp's artificial fingernails in the process. Sansbury fled from the scene with the purse and Camp telephoned the police from a cell phone that was in her pocket.

Evansville Police Department Officer Michael Sloat apprehended Sansbury at a nearby apartment complex later that evening. Camp's purse and wallet were found behind the apartment complex, and Camp identified Sansbury as the man who took her purse.

On January 6, 2005, the State charged Sansbury with class B felony robbery resulting in bodily injury. The State amended the charging information on March 23, 2005, to include a habitual offender enhancement. A two-day jury trial began on June 20, 2005. Because Sansbury did not appear for the second day of trial, a warrant was issued for his arrest and he was tried in absentia. The jury found Sansbury guilty of class C felony robbery and found him to be a habitual offender.

The trial court scheduled a sentencing hearing for July 21, 2005. Because Sansbury still had not been apprehended, the trial court held the hearing in absentia and sentenced Sansbury to eight years imprisonment for the robbery conviction and an additional twelve years imprisonment for the habitual offender enhancement.

Sansbury was ultimately apprehended more than one year after he fled. The trial court withdrew the warrant for his arrest on August 9, 2006. On September 26, 2006, Sansbury filed a pro se affidavit of indigency and a petition requesting the trial transcripts, clerk's

³ 542 U.S. 296 (2004).

record, and sentencing transcript. The trial court ordered the transcripts prepared and the clerk completed the record on October 20, 2006.

On October 26, 2006, Sansbury filed a motion for permission to file a belated notice of appeal, which the trial court granted on November 1, 2006. Through counsel, Sansbury filed a belated notice of appeal on November 21, 2006. On November 29, 2006, the State filed a motion to correct error regarding the trial court's decision to allow Sansbury to file a belated notice of appeal. A hearing was held on the motion to correct error on December 11, 2006, and the trial court expressed doubt about its decision to grant Sansbury's petition. Nevertheless, the trial court denied the State's motion to correct error because it believed it lacked jurisdiction over the cause since Sansbury had already filed his notice of appeal with our court. Sansbury now appeals his conviction and sentence. The State cross-appeals the trial court's grant of Sansbury's petition to file a belated notice of appeal.

DISCUSSION AND DECISION

The State has the right to cross-appeal a trial court's decision granting a defendant's petition to file a belated notice of appeal. Beatty v. State, 854 N.E.2d 406, 409 (Ind. Ct. App. 2006). Whether to grant or deny a defendant's petition is a matter entrusted to the sound discretion of the trial court and the trial court's decision will be reversed only for an abuse of discretion or where the decision is contrary to law. Id. A trial court abuses its discretion where its decision is against the logic and effect of the facts and circumstances before it. Hart v. State, 829 N.E.2d 541, 543 (Ind. Ct. App. 2005).

A petition to file a belated notice of appeal may be granted where the defendant was

without fault for failing to file a timely notice of appeal and was diligent in requesting permission to file the belated notice of appeal. Ind. Post-Conviction Rule 2(1). The defendant bears the burden to prove both of these requirements by a preponderance of the evidence. Beatty, 854 N.E.2d at 409. Post-Conviction Rule 2(1) also requires that the trial court consider these two factors in deciding whether to grant or deny a petition to file a belated notice of appeal and that the trial court must grant the petition where it finds that the defendant has established the two factors.

In his petition to file a belated notice of appeal, Sansbury argued that he was without fault for failing to pursue a timely appeal because he “was not informed of his right to attack his sentence by means of an Appeal.” Appellant’s App. p. 57. Sansbury’s motion conveniently fails to mention that he absconded after the first day of his jury trial and that he remained missing for more than a year before he was apprehended and began pursuing a belated appeal.

After receiving Sansbury’s petition, the trial court reviewed the record from the sentencing hearing and observed that the sentencing court did not inform Sansbury of his right to appeal. Although the trial court granted Sansbury’s petition, the trial judge commented at a subsequent hearing that he did not realize that Sansbury had not been present at sentencing:

Well to clear up some of the record, I know why I granted the Motion because this was a sentencing that Judge Heldt did and I happen[ed] to get the Motion for Permission, and I don’t know if it was pointed out in the motion, but it was brought to my attention so I pulled the record and actually listened to it, and I notice[d] there was no advisement of a right to appeal. Well I didn’t realize at the time I’m listening to the record that [Sansbury] wasn’t present at

sentencing so I had felt that either myself or Judge Heldt had neglected to advise him of his right to appeal, not knowing that he wasn't present, so I think that needs to be in the record, and I think where I erred is for some reason we didn't have a hearing on it, be it no notice to the State or for whatever reasons, we didn't have a hearing on the motion to grant the belated appeal. I was acting under the presumption that [Sansbury] was present, and we neglected to advise him when he wasn't present, so I erred assuming that he was present, and then I granted [his petition].

Dec. 11 Hearing p. 7-8 (emphasis added).

We appreciate the trial court's candor regarding its reasons for granting Sansbury's petition and it is clear that this confusion erroneously motivated the trial court's decision. However, as the trial court later realized, Sansbury was not present at the sentencing hearing and could not have been informed of his right to an appeal. And there is no evidence in the record that Sansbury's yearlong absence was anything but voluntary.⁴ Because the evidence does not show that Sansbury was without fault for failing to file a timely appeal, we find the trial court's decision to be against the logic and effect of the facts and circumstances of this case. Therefore, we reverse the judgment of the trial court and dismiss this appeal.

The judgment of the trial court is reversed and this appeal is dismissed.

SHARPNACK, J., and RILEY, J., concur.

⁴ Sansbury attempts to shift the burden of proof to the State to prove that Sansbury's absence was voluntary. However, the burden was on Sansbury to prove that he was without fault, not on the State to prove that he was at fault. Beatty, 854 N.E.2d at 409.